(Testimony of John J. Smith.)

were dealing with the Army the final inspection was at the point of delivery?

A. So long as I can remember the final inspection was always at the point of delivery.

Q. In respect to purchase orders, part of those would be filled from your Townsend Street address, is that correct? A. That is true.

Q. Was it a part of your duty to see that the purchase orders were filled?

A. No, when I would get the purchase orders—for example, if they are monthly contracts, they would then go to the shipping clerk. The orders would either come in by phone or by mail on a requisition and they would go downstairs to be filled in accordance with the instructions of the requisition.

Q. And who would you turn over the data to?

A. All of my orders that would come in would go to Mr. Goddard, the shipping clerk.

Q. Who is here in court?

A. That is correct.

Q. After the creation of the Marketing Center, was there any difference in the method of filling orders or in respect to [3950] inspection after the Quartermaster Market Center commenced the purchase of eggs for the armed forces?

A. The Quartermaster Market Center, when they started functioning at first, would call and ask us for a price on a given quantity to go to a camp, and the prices incidentally were always delivered wherever they were to be shipped. For example

(Testimony of John J. Smith.)

for Fort Ord, San Luis Obispo, Monterey, Presidio of San Francisco, or Hamilton Field, the prices we would always give were always delivered at those particular points. We would give them a price, and they got various prices from our competitors, and if we were the low bidder we would get the business. If we were high we would not get any business.

Q. That was true of the Quartermaster Marketing Center, too?

A. That is what I am referring to now is the Quartermaster Marketing Center.

Q. Under the arrangements with the Quartermaster Marketing Center where was the inspection that determined whether they accepted the eggs or the butter?

A. The final acceptance was always at the point of delivery.

Q. In addition to the Quartermaster Market Center did you have anything to do in your capacity in that company with sales to ships at the waterfront during the years 1943 and 1944?

A. I did. I had lots to do with it.

Q. In connection with those sales, Mr. Smith, what companies did you have contracts with personally? [3951]

A. I had contacts with the Matson Navigation Company, the American President Lines, Moore-McCormack Steamship Company, Weyerhaeuser Steamship Company, and a few other small companies that I just can't recall.

(Testimony of John J. Smith.)

Q. In connection with filling the orders of the firm of Nye & Nissen for steamship companies with whom you had a contract, carried on business with, which department of Nye & Nissen filled those orders?

A. Those orders were turned over, when I would receive them, to Mr. Goddard, the shipping clerk, and he would handle them.

Q. In connection with the orders from the shipping companies in the year 1943, and the ships that belonged to Matson and American President Lines and Moore-McCormack, did you have contacts with representatives of those companies from time to time?

A. I did, all of the time, yes.

Q. Did you receive from time to time purchase orders?

A. Usually they would phone and give me the order and then it would be followed by a purchase order with a definite date of delivery, and when I would receive those I would take them down and give them to Mr. Goddard to be filled in accordance with the dates mentioned in the purchase order.

Q. In the year 1943 in what type of cases did the American President Lines, Matson, Moore-McCormack and those companies require eggs to be shipped?

A. In 1943 we always used a wooden case. We did not have fiber cases until 1943. [3952]

Q. In 1944 did that change?

A. Yes, it changed. We were using fiber in

(Testimony of John J. Smith.)

1944. In fact, we had to use fiber because we couldn't get the wood.

Q. You could not get the wood?

A. That is correct.

Q. In connection with the normal routine of an order from any one of the shipping companies, where the order ultimately would be filled by Mr. Goddard, would the order either be phoned to you or be the subject of a purchase order?

A. Yes, as I mentioned before, usually they phoned and gave me the order and then it would be followed by a purchase order.

Q. Now, would those purchase orders pass through the hands of Mr. Moncharsh?

A. No, he would never see them.

Q. In the year 1944 in respect to these ships operated by the War Shipping Administration was there another division of Nye & Nissen that was supplying those ships?

A. Yes, there was a division known as the City Sales, which Mr. Berman was in charge of.

Q. How would the orders come in to Nye & Nissen in respect to the ships that were supplied by Mr. Berman?

A. I presumed he got them on the telephone the same as I did. Once in a while a steamship company would call me that he took care of and I would turn the order over to him.

Q. In the morning when you would go to work who would handle the distribution of mail, Mr. Smith?

(Testimony of John J. Smith.)

A. Well, sometimes [3953] I used to sort the mail out and other times Mr. Eichler, who usually picks up the mail and has for years, would sort it out.

Q. Who received the purchase orders that came in from day to day for supplying shipping companies?

A. They would probably be mailed to Mr. Berman's attention and mailed to my attention. My letters would come to me and his letters would go to him. Once in a while I would happen to open one of his letters, but then I would hand it over to him.

Q. You would hand over the actual purchase order to Mr. Berman?

A. Covering the steamship companies which he handled, yes.

Q. And if the purchase order related to the companies for which Mr. Goddard was filling the orders——

A. If it was the steamship company that I was in contact with, I would, after opening the mail, I would take it down and give it to Mr. Goddard.

Q. When in the normal course of business, Mr. Smith, in April and May of 1944, a telephone call or a request in the form of a purchase order was received by you, the firm of Nye & Nissen, and delivered to Mr. Goddard, did you ever give him any direction of any kind as to which particular cases of eggs to use to fill that order? A. Never.

Q. Did you ever give him any direction of any

(Testimony of John J. Smith.)

kind as to which particular box of butter to use to fill the order? [3954]

A. No, he had his inventory of eggs and butter down there and he knew what the scores were of the different lots and he filled it out of those different lots.

Q. In respect to cheese, did you ever indicate to Mr. Goddard what particular cheese would go to fill an order? A. Never.

Q. You know, do you not, Mr. Smith, that in connection with filling orders it was the practice of the company to issue an invoice and a handbill?

A. That went along with the delivery.

Q. Yes? A. Yes.

Q. With respect to the handbills that went along with the deliveries, in that phase of the business with which Mr. Goddard was the shipping clerk, I will ask you if those hand bills would be presented to you for your attention?

A. No, I would never see them.

Q. Would you see them after the order went out?

A. I would not. The only thing I would see would be the charge the next day.

Q. What?

A. The charge, the sales sheet that would come through the next day.

Q. I mean would these invoices like that pass through your hands, and I show you Defendants' CW for Identification? Would those pass through your hands?

(Testimony of John J. Smith.)

A. No, they would not, but the duplicate of this, the charge, the next day I would see it. [3955]

Q. That is what I am trying to get at. You mean a duplicate of that——

A. That is correct. It would be a carbon copy of that the next day would come through on the sales.

Q. On a sheet or would it come through in this form?

A. It would come through in this form exactly, a copy of that.

Q. Maybe I am confusing you with the question. In other words, there is a printed "S" there, is that yours?

A. No—oh, yes, that is mine. I put my "S" on the sales sheet when it comes through.

Mr. Faulkner: I haven't got this clear.

The Court: Is that an original or a copy?

Mr. Faulkner: This appears to be a photostat copy, your Honor.

The Court: We will take a recess.

(Recess.) [3956]

The Court: Proceed.

Mr. Faulkner: Q. Mr. Smith, I don't think I had it clear in my mind and therefore I could not make it clear in my question. Now, we have in this trial, when I say "we" I mean the various witnesse, probably I am the main offender, we have referred to documents like this as a handbill or an original invoice. You notice it has a No. "2" on it.

A. That's right.

(Testimony of John J. Smith.)

Q. That would be the office copy?

A. That is correct. I thought that was the original, I did not know that it was a photostatic copy. It was the original that had an "S" on there.

Q. I see. In other words, it would have been better if I had handed you some of these?

A. The number "2's" those are the ones that came to me.

Q. Those that are in blue?

A. That's right.

Q. What do you call that?

A. Well, if it was the number "1"——

Q. Is that a charge sheet?

A. No, that is the invoice. That is the No. 1 copy that goes with the merchandise. However, to the War Shipping, they were always certified, certified copies, five, six, ten, whatever the steamship company asked for.

Q. That is the No. 1: We haven't got that here. I am talking about this——

A. That is the charge sheet, the No. 2.

Q. That is what I mean. In other words, the No. 1 would go to the shipping company, that is properly referred to then as a hand invoice?

A. Yes.

Q. Or a handtag. A. That's right. [3957]

Q. But the No. 2 copy which was printed here "Office copy No. 2," you call that a charge sheet?

A. Charge sheet.

Q. Now, in respect to the charges made by Mr.

(Testimony of John J. Smith.)

Berman, City Sales, do those pass through your hands after the charges are made?

A. They do not.

Q. In respect to the charges where Mr. Goddard is the shipping clerk, is there a uniform practice in respect to those charges passing through your hands?

A. Yes, those are his charges, there, and those are the ones that I reviewed the next day.

Q. Nye & Nissen, Inc.

A. Yes, that is correct.

Q. What do you do with them?

A. Well, first the girls check them in the morning, extensions and the prices. Then they come to me for the totals and the prices. I check the prices. I don't check the extensions, maybe I won't even check the dozens, for example; if it is 160 cases or 164 cases I wouldn't take time to check the total number of dozen. That is done by the office girls, but I have checked the prices.

Q. When you do that with the charge sheet——

A. I put a little mark or my initial there.

Q. I am not going to go through the entire record and pick out every one of these that has an "S", but is that what you put on there, on these various invoices, is that the marking that you put on the invoices? A. On the charge sheet.

Q. The charge sheet, or this copy, No. 2, and particularly after you have checked it and have looked at it?

(Testimony of John J. Smith.)

A. That is correct; [3958] sometimes I might miss them, too.

Q. And some you would check?

A. That is right.

Q. When you would not check them who would do the same work you do?

A. No, nobody check them. Sometimes if I was away a week or a month I have to go through the whole month.

Q. Does Mr. Moncharsh take these invoices and check them after you?

A. He doesn't, not that I know of. I have never seen him do it.

Q. Did you see him do it?

A. Never have seen him do it.

Q. Never have seen him checking the prices and the extensions and the description of invoices?

A. Never.

Q. In connection with the filling of orders by Mr. Goddard, have you ever heard Mr. Moncharsh ever give any direction of what particular eggs to give to any of the American President Lines ships which were being operated in April and May, 1944, or the Moore-McCormack ships or the Weyerhaeuser ships, or United Fruit, or any of the companies which you were handling? A. No.

Q. Matson? A. I never have.

Q. Have you ever told Mr. Goddard to give a particular box of eggs, a particular quantity of eggs to fill a particular order for those ships?

A. No, I have not.

(Testimony of John J. Smith.)

Q. How long a period of time, Mr. Smith, have you been handling the accounts of those San Francisco firms, Moore-McCormack, Matson, and American President Lines, how many years have you been [3959] handling their accounts, giving them butter, eggs, and cheese, and other things?

A. Well, the Matson Navigation Company, I have been handling them for twenty-five years or more, or, thirty years. The American President Lines I would say twenty-five years, at least. Moore-McCormack, they are a new company, I would say in the last eight or ten years. They were McCormack Steamship Company, and there were other companies that sort of consolidated, probably six or eight years with the Moore-McCormack Steamship Company.

Q. Those companies were good customers of Nye & Nissen?

A. They are big customers.

Q. Bought large quantities?

A. Large quantities.

Q. The bulk of handling those accounts was always handled by you?

A. Always came to me unless I was out of town.

Q. Now, Mr. Smith, at any time when any of these hand bills, charge sheets, rather, came to your attention it was following the delivery, in the months of April or May, or at any time, did you ever know that there was a single description of a single article on those charge sheets that did not correctly describe the merchandise?

A. Absolutely not.

(Testimony of John J. Smith.)

Q. That would be true, Mr. Smith, if I showed you each of these hand bills relating to some four or five ships?

A. It would be true. Anything that I would look at there on those charge sheets, when I would be here, I would check them.

Q. Mr. Smith, in connection with butter, you have participated [3960] extensively, have you not, in the handling of butter for the firm of Nye & Nissen? A. Correct.

Q. That has been part of your work for many years? A. That's right.

Q. When you moved into the plant at Seventeenth and Missouri, how was your butter cutting department as compared with Townsend Street? By that I mean, are you equipped to handle the cutting of butter in greater quantities in your new plant? A. That is correct.

Q. Now, in addition to that, Mr. Smith, in order that this may be cleared up, is there or has there been an inducement in recent years since OPA to cut, to still cut butter? A. Yes, there has.

Q. Because of the price?

A. That's right. They gave us a price which made it more profitable to sell printed butter.

Q. Back in 1942, and back to 1939, 1938, how was the bulk of the butter of the firm of Nye & Nissen handled in respect to cutting? Was it cut in your plant, or not?

A. Yes. We did very little cutting in our plant prior to that time.

(Testimony of John J. Smith.)

Q. That is, by "very little," you mean in your——

A. The quantity that we handled; most all of our sales were in bulk.

Q. Now, in the matter of sales of butter to the U. S. Army, was that a matter in which you participated? A. Yes, it was.

Q. Did your participation extend commencing—what would your [3961] participation be?

A. Starting in 1938.

Q. From 1938 to 1942.

A. Well, we would receive proposals asking for a certain quantity of butter to go to a given place. Then we would enter a bid on the forms of proposals that they would send us, and if we were successful then we would get the order and the orders would come in and they would be filled. Sometimes they would be packed at our Petaluma plant, or packed in our San Francisco plant.

Q. In relation to the packing of the butter for the Army under those orders, would all of the orders call for cut butter?

A. Yes; mostly always printed butter, that I can remember.

Q. That is packed——

A. Yes. I don't think they ever took any bulk butter, they were always prints, printed butter.

Q. The Army? A. Yes.

Q. During those years? A. Yes.

Q. In respect to that butter, would you partici-

(Testimony of John J. Smith.)

pate in the transaction leading up to preparing that butter for delivery to the Army officials?

A. No, I had nothing to do with the physical preparation of it.

Q. Did you observe how other people in the plant of Nye & Nissen go through the routine of preparing and filling an Army order?

A. Many times.

Q. Have you ever observed Colonel Hand out there inspecting butter? A. Many times.

Q. As you observed that operation on Townsend Street, will you state generally how that operation was handled, as you observed Colonel Hand, and how it was handled as you observed the employees of Nye & Nissen, we will say the years 1941 or '42 at Townsend Street.

A. Well, we would receive our order for a given quantity of butter. We will say for a delivery to the Presidio at San Francisco, to the Quartermaster, for the month of June. Just before the month was to start we would ask Colonel Hand, or Captain, or Major, whatever he was in those days, to come in and look at a lot of butter, say 200 boxes, cubes, solid butter. We would have it on the floor. He would come in and he would open up one box of each churning. Each churning represents about fifteen, maybe eighteen boxes. He would grade it, make a notation of the churn number, if he accepted it; some he would reject, others he would accept. Those that he would accept he would make a record of the churn numbers, and he would ask

(Testimony of John J. Smith.)

us: "When do you want to cut this butter?" "Tomorrow morning, Captain," or "Major." "All right, I will be here and I will bring somebody else here to be present when the operation is going on." The next morning he would come to the plant with his man and they would start at eight o'clock, at eight o'clock the operation would start. The butter would be stripped, go into the butter-cutting room, go through the cutter. His man would be there to check the weigths occasionally. Every so often he would go to the scale [3963] and see how the butter would weigh, and then it would go along in the line, come up to be boxed, and it would be stamped and then it would go into the ice house. Then that butter subsequently would be delivered on the orders that would come in from the different posts. Thereafter the butter would be rechecked and weighed on delivery. That is what the contract called for, to be rechecked at the point of destination.

Q. Would the butter be reweighed at delivery?

A. Surely, as far as I know the butter was always checked and weighed at point of delivery.

Q. In relation to the method of handling and weighing at the point of delivery, was there a method of handling, that is, between the Army and Nye & Nissen, when they checked the weight at point of delivery?

A. We had nothing to do with that. Our drivers would take the merchandise out there and that

(Testimony of John J. Smith.)

would be the last we would see of it if it was accepted when it arrived there.

Q. I did not make myself clear. In other words, Nye & Nissen had nothing to do with the weighing of butter at the point of delivery?

A. Correct.

Q. Did your firm, however, accept the Army's weights at the point of delivery? A. Yes.

Q. When those weights were made by the Army was there a routing method of handling any difference between the quantity called for and the quantity indicated in the weights?

A. It would [3964] always depend where it would be going. If it was going to a post for sale and if the butter was short it would be returned, that is, to sell the article again to individual people. If it was going to a boat or the ice house and it was a little short, a discrepancy in the weight, then we would give them a credit.

Q. When the butter was delivered for a certain purpose, when it didn't meet the weight specified and the butter would come back, there would be a discrepancy in the weight and it would then be handled as a bookkeeping transaction?

A. Yes, always. If it was an order where it was going to a troopship or where it was to be exported out, that would be it. Where it was to sell again each pound must weigh a pound after it is wrapped and it would come back.

Q. In relation to these orders that would come in, 30, 40, 50 or 60 cases of eggs, these purchase or-

(Testimony of John J. Smith.)

ders from ships, were those considered as small orders in your plant?

A. Yes, they were considered as small orders.

Q. Some of these ships that you were supplying, Matson and American President Lines, and those ships, they bought in large quantities?

A. From time to time they would buy in large quantities, 500, 800, a thousand, up as high as 1500 cases in an order for a single ship.

Q. Did you know a man named Henry Pineda?

A. Very well.

Q. Did he work for the firm of Nye & Nissen?

A. He did. [3965]

Q. Did you ever go down to the National or the Merchants Ice & Cold Storage plant with Mr. Pineda and Mr. Goddard and a man named Barfield, Mr. Nix, in January of 1940, and participate in an incident that related to strapping cases of eggs, in January, 1940?

A. Yes, I went down to the ice house.

Q. When was that?

A. But it was not in 1940.

Q. I asked you if it was in January, 1940.

A. It was not. It was in 1942.

Q. What month of the year?

A. It was in August, 1942.

Q. Who went down there with you?

A. Mr. Goddard, Mr. Pineda, and Mr. Barfield, and myself.

Q. How did you happen to go down to the Merchants Ice & Cold Storage Company on that day?

(Testimony of John J. Stid.)

A. I had been away on my vacation and I had just returned. That is why I know it was in August of 1942. I was gone about three weeks. On a Saturday morning the Quartermaster Market Center called me and how I know it was 1942, the Quartermaster Market Center was not in operation until October of 1941. At that time they didn't buy any eggs and put them in the ice house. That started in the spring of 1942. I had a call from the Quartermaster Market Center on Saturday morning, closely on to noon time; asked me if I would get in touch with Colonel Kitchner regarding some eggs that were in storage down at the ice house. I said, "What's the matter?" He said, "Well, you get in touch with Colonel Kitchner, he will tell you all about it." I said, [3966] "O.K., I'll do it."

I immediately called Colonel Kitchner and told him that the Market Center had called me in reference to some eggs at the Merchants Ice & Cold Storage plant. He said, "Yes, that's right. I tell you, I'll have Major Bentham get in touch with you and tell you all about it." So maybe half an hour later, now about twelve o'clock, Major Bentham called me and asked me if I would go down to the ice house with him to look at some eggs. I said, "Yes, I'll be happy to." He said, "When do you want to go?" I said, "Any time you want." He said, "Let's go on Monday." I said, "Why not go this afternoon, Saturday afternoon?" He said, "All right, I'll see if I can make the arrangements, and

(Testimony of John J. Smith.)

if I can I'll call you back." I said, "All right, O.K.; I'll expect to hear from you." So I went right downstairs to Mr. Goddard and I asked him if any of the boys had left. Mr. Nix had gone and Mr. Menges had gone. The only one left there was Peneda. So I said, "I'll tell you what you do. They asked me to bring two or three men if we go down." I said, "Call the hiring hall and see if you can get two men to come with us." Then I went to lunch. I got back there about 1:30. So when I got back Mr. Goddard, he told me he couldn't get any men from the hiring hall. At 1:30 Major Bentham called me. He said, "All right, I'll meet you at the ice house at two o'clock." I said, "O.K., Major." [3967]

So I went downstairs to Mr. Goddard. I said, "We will leave in a few minutes." So then, one of our trucks, a City Sales driver drove back, drove in. I said, "Maybe Joe will go down, Ruby, ask him." He said sure, he would be glad to go. I didn't know the first thing we were going to do when we got there. So we arrived at the Merchants Ice House just about two o'clock. Right there at the door was Major Bentham, Lieutenant Joneschild and two other lieutenants, I never did get their names, I was not introduced to them. The major said, "Jack, we have some eggs that we want you to change for us." I said, "What do you mean, 'change'?" He said, "There are some eggs in this not that we would like to have you take back." So I asked if they had the purchase order. It had

(Testimony of John J. Smith.)

been a purchase of 2000 case of eggs. That was filled from July 29th until August 12th, when the last lot was in there. So we went upstairs into the room, and it was a big room, probably the room was twice as big as this room here. I would say there was probably 20,000 case of eggs in this room. Probably 5000 had gone out. There was plenty of space there. I think practically all the 2000 cases —he said, "There is a pile here that we would like to have you transfer; break them down and we will look at the cases, the ends of the cases where the wires are and some cases we don't want, we want you to take back, exchange them and give us another lot of eggs." I said, "All right, Major." I said, "If you want, I will take the [3968] whole lot back, the whole 800 cases. We won't have to do that. We won't have to go through all that work." He said, "No." Lieutenant Joneschild spoke up and said, "No, that is not necessary. If you do what we want we will be satisfied." "O.K., I will instruct the boys." They made a bench of nine case, three high. The eggs were stacked up about 10 or 12 high and they broke those cases down, and one lieutenant stood at one end and another lieutenant at the other, and every case that showed another wire, a wire had been changed, or there was any second imprint, they asked that it be set aside. So we started. It was quite a job. The boys passed the case down. They finally had to make steps to get up to them. So I stayed there probably twenty minutes, half an hour. It got pretty cold. As long

(Testimony of John J. Smith.)

as I wasn't doing anything, the temperature in that room is 32. I went outside and a little later Colonel Joneschild came out, and we stood there talking.

Q. Mr. Smith——

A. Well, I am not finished yet. You want me to answer, don't you? Well, I guess we got started at 2:30. I think we finished up at 5:30. When they were all through I think there was about 65, between 60 and 70 cases that were set aside. The rest were piled back in the regular stacks that they were formerly. So we were all there. In the meantime Major Bentham had left. He only stayed about half an hour. I said, "Lieutenant, What do you want me to do?" [3969] He said, "I want you to take these 65 cases," whatever there were. I said, "All right, we will exchange them. We can't do it until next week. I will report it to the packing plant." So he said, "How would you like to look at a few cases of these eggs?" I said, "O.K." So we brought out five cases, each man carried one. I didn't carry one. Mr. Goddard, Mr. Barfield, Mr. Pineda and the two lieutenants each carried one. They brought five case out, and there was a candling room there. We opened up one and looked at it. Opened up another case and looked at it. We opened up three cases and looked at them. The eggs had been in storage, some of them from July 20th. I think 700 cases or 600 cases, and from there on to August 12th I think the order was completed, or almost completed. I think there was 150 cases still to complete it.

We looked at them together. They were sold as Extras. We would go down 100 eggs. I said to the lieutenant, I said, "It is my opinion they are still a good delivery after being in storage for two or three weeks." So he felt they were not a good delivery. I said, "That's all right, I think they are still a good delivery, and I am happy to take them back and make the exchange." The second case the same way, and the third case, and we finally put them back and we all left.

Q. Mr. Smith, in that transaction did you at any time tell Mr. Pineda or Mr. Goddard to stand on those cases and scuff any wire marks off?

A. Definitely no. There wasn't any reason [3970] for that. I had agreed to take back the whole pile, so why should I ask them to do anything like that?

Q. Did you observe the Army man in so far as those cases——

A. At all times. As I said at the start, I was in there for about half an hour when this man, these two Army officers did the checking business and looked at the eggs and the cases that passed went back into the pile and those they rejected were set aside. Nobody else had anything to do with those cases except those two Army officers.

Q. In connection with the inspection that was made in that plant, when it was all over did the number of case which had been set aside that these Army men thought that the straps had been moved on exceed the number of cases that would normally

(Testimony of John J. Smith.)

be sampled in any Army inspection for an 1850-case lot?

A. Well, in that inspection at the ice house, or whereever they happened to make it, they usually make a five percent inspection.

Q. 1850 cases——

A. That would be 90 cases.

Q. With respect to that figure 90, were the total number of case that were found in the place where the Army told you to go, did it exceed 90?

A. They were under 90. They probably didn't exceed 60 or 70 cases. I don't exactly remember the correct amount.

Q. Is this the purchase order from the War Department that covered that particular transaction?

A. That is the purchase order. [3971]

Q. Is that an orifgnal record of the firm of Nye & Nissen?

A. That is the original record and here is the way they were delivered.

Mr. Faulkner: We offer it in evidence.

(The document was marked Defendants' Exhibit FF in evidence.)

Mr. Faulkner: Q. Was Mr. Nix in the employ of Nye & Nissen in August, 1942?

A. Mr. Nix was not with us in August. He left in February, 1942. [3971-a]

Q. Mr. Smith, I observe on this Defendants' Exhibit FF certain dates in handwriting. Is that the way this was preserved in the usual course of

(Testimony of John J. Smith)

Q. Your business at all times to indicate on the purchase order dates of delivery?

A. That is correct. This purchase order goes downstairs to the shipping clerk, and as deliveries come in from the different plants, he makes a record of this purchase order, shows exactly where they came from.

Q. What is the quantity of eggs covered by that purchase order?

A. It is 2,000 cases or 60,000 dozen.

Q. And what type of egg?

A. They are U.S. Extras.

Q. What were the dates of the deliveries?

A. On July 29 from Petaluma there was delivered 600 cases, on August 3, 1942, from Utah, 550 cases, on August 5, from Petaluma 300 cases, on August 5, 1942, from Petaluma 300 cases, on August 12, 1942, from Petaluma 400 cases, and on August 28, from our Santa Cruz plant, 150 cases, or a total of 2,000 cases.

Q. The visit that you described here to the Court and Jury occurred between certain of these dates. Now, which order was not delivered?

A. There was 150 cases that came that completed the lot after our visit down there on August 22, on Saturday. Those came from Santa Cruz.

Q. Mr. Smith, in the years 1938, 1939 and 1940, or particularly in the years 1939, 1940 and 1941, were any orders for any [3972] person, firm or corporation, in 2,000 case lots ever filled in the plant of Nye & Nissen on Townsend Street?

(Testimony of John J. Smith.)

A. No, we would not have the eggs there.

Q. In thousand case lots? A. No.

Q. During those years would the Veterinary Corps or the Department of Agriculture ever come down to Townsend Street and inspect—would there be eggs assembled for them to inspect for orders running into one thousand, fifteen hundred or two thousand cases? A. Absolutely no.

Q. Eight hundred cases, five hundred cases—would those orders be filled on Townsend Street?

A. They may be up to two or three hundred cases would probably be the limit. That is the best of my recollection. When you get into larger quantities, those were all handled at the packing plants.

Q. In the years 1939 and 1940, while you were at Townsend Street, did you ever see Mr. Moncharsh ever stamping cases of eggs with a Departmentof Agriculture stamp?

A. No, I never have, absolutely not.

Q. Have you ever seen him stamp eggs with any stamp at all? A. Never in my life.

Q. Have you ever seen any employees of the firm of Nye & Nissen stamp eggs with a Department of Agriculture stamp? A. I have.

Q. Have you done it yourself? A. I have.

Q. On many occasions?

A. I wouldn't say many, but I have [3973] done it on numerous occasions when the Department of Agriculture men would be there. They would be busy, and they would hand me the stamp—

(Testimony of John J. Smith.)

"Stamp us those." It wouldn't be large quantities—25 cases, 50 cases—but the boys on the floor have stamped up large quantities for them, a couple of hundred cases, three hundred cases, whatever the number of the cases would be.

Q. During the period of time that you were at Townsend Street did the firm of Nye & Nissen keep or did anybody keep in the safe in the upstairs office that you had at Nye & Nissen's plant on Townsend Street a Department of Agriculture stamp? A. Absolutely not.

Q. Did the company have or did you ever see a Department of Agriculture stamp which was used in the absence of the Department of Agriculture inspector? A. No.

Q. Was there a man named Andrade employed by the firm of Nye & Nissen in the year 1939 and for a part of the year 1940?

A. Yes, there was.

Q. Directing your attention to the years 1939 and 1940, have you any recollection of an incident where the firm of Nye & Nissen was preparing in the plant on Townsend Street an order for a thousand cases of eggs?

A. I haven't any recollection of any such order.

Q. Or five hundred cases of eggs? A. No.

Q. Apart from any number of cases of eggs did you ever observe [3974] Mr. Moncharsh, the defendant, in this case, using a Department of Agriculture stamp? A. Absolutely no.

Q. Did you, in connection with that period of

(Testimony of John J. Smith.)

time or any period of time in the presence of Mr. Andrade or in any other person's presence say to Mr. Moncharsh in substance and effect, "You shouldn't do that, Abe. You will end up by going to jail and getting in a lot of trouble"?

A. No.

Q. And Mr. Moncharsh is supposed to have said to you, "You don't understand this business. You don't know what it is all about"?

A. He never made such a statement.

Q. And you are supposed to have told him not to use the stamp, he would go to jail?

A. I never made such a statement.

Q. Have you ever seen a Department of Agriculture stamp in any part of the premises of Nye & Nissen that was there to be used by Nye & Nissen or their employees when the Department of Agriculture men were not there? A. No.

Q. Did you ever see a Department of Agriculture stamp that was kept downstairs in the shipping clerk's desk there on Townsend Street?

A. No.

Q. Or on 17th and Missouri Street?

A. No.

Q. By the way, Mr. Smith, at the time you went down to the ice house in this transaction which we have just covered, did Mr. Berman go down there?

A. No, he was not with us. I named the men who were there. [3975]

Q. During the period of time, Mr. Smith, that you were handling sales to the Army and sales

(Testimony of John J. Smith.)

also where the Department of Agriculture inspected, during the years 1938, 1939, 1940, 1941 and 1942, on Townsend Street or on Missouri Street since you moved there, up to 1945, have you observed the inspection of eggs by various members of the Department of Agriculture and by members of the Veterinary Corps?

A. I have on many occasions.

Q. How long have you handled eggs, Mr. Smith?

A. Do I have to tell?

Q. No, you don't have to?

A. Thirty-eight years.

Q. Did you examine them over that period of time for purpose of determining their quality and their grade?

A. That is right. I have not candled eggs but I have inspected eggs. I would inspect a lot that would come in, take a handful that came out of a case, and determine what the eggs were.

Q. In connection with that subject matter, Mr. Smith, have you observed the variations from time to time of the conclusions that people will reach, inspectors will reach, not only in respect to the same lot of eggs, but in respect to the same case of eggs which they have inspected?

A. That is correct. Every person inspecting a case of eggs will arrive at a different percentage. No two persons will give you the same grade of a case of eggs. [3976]

Q. Have you seen the variations large on occasions?

(Testimony of John J. Smith.)

A. Oh, sometimes it will run ten, fifteen or twenty percent. It all depends on the individual candling the eggs.

Q. I did not mean in percentage, Mr. Smith. Have you seen variations where one inspection agency would reach a conclusion that a certain quantity of eggs had a certain grade and another inspection agency would reach a conclusion that it had an entirely different grade?

A. Absolutely, and I have seen the same agency, two inspectors from the same agency, have a differential.

Q. How wide a differential would there be with respect to the grades, such as AA, A, B and C?

A. Well, it is up to the individual in candling the eggs. After all, the candling of eggs is nothing but sight and feel. You look at the egg, you feel it. And then you put it up to the candling light. It all depends on the way the individual candles. No two individuals put the egg up to the light in the same manner. I can stand behind candlers and watch people candle them. They have different ways of holding the egg up to the light. Some put them right up to the light, some hold them away from the light, and that determines the various grades when they are candling them. That is the inspectors. Most of the egg candlers work just about the same when they are candling, but the inspectors have a different method of candling.

Mr. Faulkner: I think that is all, your Honor.

Q. Mr. Smith, do you recall a transaction some

(Testimony of John J. Smith.)

time in 1942 between Colonel Hand and Mr. Moncharsh, in which some suggestion was made that the Colonel not come to the plant any longer?

A. Well, I didn't know that that altercation had taken place until the next morning. I was downstairs, and Colonel Hand came in with his driver or soldier of some kind. It might have been an officer. I don't remember. And he asked for Mr. Moncharsh. And I said, "He is upstairs."

He said, "I want him to repeat to me what he said yesterday".

I said, "What did he say?"

And he told me—"Tell your commanding officer I don't want you to come in here and inspect eggs any more." The colonel was a little bit excited. He was either a major at that time or a captain. I said, "Let's go upstairs".

We went upstairs, went in the office, and I said, "I will get Mr. Moncharsh."

So I sent for Mr. Moncharsh and he came in and the Major said to him, "I want you to repeat what you said to me yesterday," or words to that effect.

He says, "You heard what I said yesterday. That stands."

So then I said, "Well, now, let's forget this. There is no use of having this quarrel. Colonel, we want to get along with you. We want you to come in here. We all get excited. I realize I do myself. I fly off the handle; but the next [2078] day it is all forgotten."

(Testimony of John J. Smith.)

And after probably ten or fifteen minutes there the Colonel left with his man, and he came into the plant as usual after that. There wasn't any difficulty at all, except once in a while he and I would put on the boxing gloves. But, after all, we were friends when the thing ended up.

Q. In other words, you got along pretty well?

A. Oh, sure.

Q. But you quarrelled with him, too?

A. That is right. Nothing serious, though.

Mr. Faulkner: I think that is all, your Honor.

Mr. Pratt: There is no cross-examination.

The Court: Step down. It is twelve o'clock. We will take a recess until two.

(Thereupon a recess was taken until two o'clock p.m.) [3979]

Afternoon Session, April 3, 1946, 2:00 p. m.

The Clerk: United States v. Nye & Nissen.

The Court: Waive the roll call, stipulating and agreeing the jurrors are present and seated in the box.

Mr. Faulkner: Yes.

The Court: Proceed.

Mr. Pratt: If the Court please, at the end of the cross-examination of Mr. Moncharsh I asked him to produce whatever correspondence, further correspondence his company had had with the Hammond Shipping Company in regard to the steamship Base.

Mr. Faulkner: Your Honor will recall in that

connection that the steamship Base was the subject matter of some letters to the introduction of which I objected upon the ground that they were collateral, and that any substantive charge or inference arising out of that transaction was no part of this case.

Now, then, the theory of the Government in offering that letter was in connection with the testimony of Mr. Moncharsh as to whether he had received a complaint. Now, they showed him this letter that was a complaint and they showed an answer. If the subject matter of that ship is to be tried here, why, I don't think it is admissible. I don't see its relation to anything at all. Your Honor will recall——

The Court: What about the letter? I will have to know something about the letter. [3980]

Mr. Faulkner: The letter was a letter in which the Hammond Shipping Company had written to the firm of Nye & Nissen. Mr. Pratt asked Mr. Moncharsh if he ever received any complaint from ships and asked him a series of questions for the purpose of laying a foundation to impeach his testimony in relation to complaints. He then produced a letter which he claimed was a complaint, that Mr. Moncharsh had written in answer. The law, as I understand it to be, is that anything going to the weight of the credibility of the witness——

The Court: What is before the court at this time, so I can rule?

Mr. Pratt: I simply directed the court's attention to the fact that I asked for the production of

whatever further correspondence that occurred between Nye & Nissen and Hammond Shipping Company in connection with the steamship Edward Base. I am asking for what?

Mr. Faulkner: If the Court please, if the court directs an answer be given to that I address to the court as an objection that it is a collateral matter, that they were bound by his answer. In other words, Mr. Moncharsh had on direct examination indicated that in respect to fifteen ships he had no complaints. Then on cross-examination they try to broaden that field and after broadening it they produce that letter. That is solely on the question of impeachment. It had noting to do with the case. That is the clear-cut—— [3981]

The Court: The letter is here?

Mr. Faulkner: It is here.

Mr. Pratt: The letters are in evidence and have been read to the jury.

The Court: Where is the letter?

Mr. Pratt: It starts a few letters before that (indicating).

The Court: Proceed, gentlemen. Have you your record——

Mr. Faulkner: Does your Honor mean I am to respond to that request?

The Court: If any letter that he calls for is available you may give it to him and I will rule on it for the purpose of the record, so that both sides are protected.

Mr. Faulkner: The letters that are in evidence are all of the letters we have in our files.

Mr. Pratt: That is all I wanted to know.

Mr. Faulkner: Did you have any other request?

Mr. Pratt: No.

JOSEPH L. EICHLER,

called as a witness for Defendants; sworn.

The Clerk: Will you state your name?

A. Joseph L. Eichler.

Direct Examination.

Mr. Faulkner: Q. Mr. Eichler, you have already been [3982] sworn as a witness for the United States in this case? A. Yes.

Mr. Faulkner: I did not say that to embarrass the clerk, your Honor, but I wanted to identify him, it was so long ago since he was on the stand.

Q. Mr. Eichler, you hold a position in the firm of Nye & Nissen as what?

A. Office manager.

Q. In connection with that are you in charge of the books and records of that company?

A. Yes.

Q. Are the books of account of that company kept under your direction and control?

A. I did not get that.

Q. Are those books of account kept under your direction and control? A. They are, yes.

Q. Were they kept under your direction and control during the years 1938 to 1944?

A. They were.

(Testimony of Joseph L. Eichler.)

Q. Mr. Eichler, have you prepared from the records of Nye & Nissen a record showing the volume in cases of eggs handled during the years 1938 to 1944? A. I did.

Q. Have you as part of the same record prepared the volume in pounds of butter handled in the years 1938 to 1944? A. Yes, sir.

Q. And have those been prepared from the books of original entry of your company?

A. They have.

Q. I show you a document, and I will ask if that is a resume showing the quantity of cases and the quantity in butter handled in that seven-year period. A. That is correct.

Mr. Faulkner: I offer this in evidence, if the Court please [3983] The foundational records are here in court, are they, Mr. Eichler?

A. Yes, they are.

Q. The books of original record.

The Court: Admitted and marked.

(The documents were marked Defendants' Exhibit EJ in evidence.)

Mr. Faulkner: As I understand, Mr. Pratt, when the jury retired, it is agreeable to you that all these foundational records need not be introduced as part of——

Mr. Pratt: That is right. We accept the statement as stipulated by counsel that these are correct statements from the books of account.

Mr. Faulkner: That's right.

Mr. Pratt: Reliance is upon counsel.

(Testimony of Joseph L. Eichler.)

Mr. Faulkner: Well, thank you very much.

Q. Now, Mr. Eichler, directing your attention to Defendants' EJ, will you state the number of cases of eggs—I will withdraw that.

A case of eggs contains 30 dozen eggs, is that right? A. That's right.

Q. The reference to cases refers to case of 30 dozen? A. That's right.

Q. How many cases of eggs were handled in the year 1944? A. 312,620 cases.

Q. That would be about in excess of nine million dozen, is that right? A. That's right.

Q. What quantity of butter was handled in that year? A. 5,827,819 pounds.

Q. In respect to your calculations in regard to butter that appear on that exhibit, is that exclusively butter?

A. No. We kept the cheese and the butter in the same account.

Q. Why was that?

A. Well, the quantity of cheese that we handled was comparatively small and inasmuch as the unit was the same, that is, in pounds, the same as in butter, we didn't deem it necessary to carry a separate account for that.

Q. What was the maximum quantity in any year in relation to the pounds of butter reflected in that exhibit, what would be the maximum—withdraw that.

What was the amount of eggs and butter handled in 1943?

(Testimony of Joseph L. Eichler.)

A. 332,833 cases of eggs; 7,130,818 pounds of butter.

Q. In 1942?

A. 339,772 cases of eggs; 5,460,640 pounds of butter.

Q. 1941?

A. 290,366 cases of eggs; 5,050,993 pounds of butter.

Q. 1940?

A. 302,072 cases of eggs; 4,522,184 pounds of butter.

Q. 1939.

A. 203,909 cases of eggs; 5,439,636 pounds of butter.

Q. 1938.

A. 226,242 case of eggs; 3,855,394 pounds of butter.

Q. The total number of eggs in that period?

A. 2,007,814 cases of eggs.

Q. Total number of pounds of butter?

A. 37,287,508 pounds.

Q. Mr. Eichler, in respect to the relation that cheese bears to [3985] those pounds of butter that you have just read, in which year do you recall the maximum amount of cheese was sold?

A. In 1943.

Q. Do you know the amount of cheese in that year?

A. No, I don't. I have the figures for 1944.

Q. What were the figures in 1944; have you got them? A. I think your have, Mr. Faulkner.

(Testimony of Joseph L. Eichler.)

Q. Well, in all events, Mr. Eichler, in order to give me exact weight of butter as distinguished from cheese during the period covered there it would have required what work?

A. Well, it would have been considerable work. We would have had to go through all the invoices that were issued in a year and pick out the number of pounds of cheese.

Q. In the whole seven-year period?

A. In the whole seven-year period. I believe there were some years there that there was practically no cheese sold at all.

Q. The greatest amount in any year as you remember would it exceed 10 percent?

A. It wouldn't be 10 percent. [3986]

Q. Now, Mr. Eichler, have you prepared from the books of original entry of the firm of Nye & Nissen a summary of the quantities of butter, eggs and cheese sold to the armed forces? By that I mean as distinguished from the War Shipping boats. A. I have, yes.

Q. In the interest of time, will you just read me from your original records, because it is not on this exhibit, who the particular units were in the United States Government who were purchasers during the year 1944?

A. The U. S. Marine Hospital, Quartermaster Ft. McDowell, Sales Commissary, Quartermaster Presidio of San Francisco, Presidio of Monterey, the Navy Market Office, and the Quartermaster Market Center.

(Testimony of Joseph L. Eichler.)

Q. I show you this paper and ask you if that is a summary that you have made from your original records of the quantities of butter, cheese and eggs sold to the departments of the Government you just read off in the year 1944?

A. It is, yes.

Mr. Faulkner: I offer this in evidence, if your Honor please.

The Court: It may be admitted and marked.

Mr. Faulkner: Did I give you a copy of that, Mr. Pratt?

Mr. Pratt: Yes.

(The document was marked Defendants' Exhibit EK in evidence.)

Mr. Faulkner: Q. Directing your attention to Defendants' Exhibit EK in evidence, I will ask you what quantity in dozens [3987] or cases were sold to those various departments which he just read in the year 1944?

A. There were 2,770,650 dozen, or translated into cases that would be 92,355 cases of eggs.

Q. And how many pounds of butter?

A. 242,760 pounds.

Q. And how many pounds of cheese?

A. 2,554.

Q. During the period of 1944 your company was sellers in large quantities of eggs, butter and cheese to ships designated as War Shipping Administration ships, is that correct?

A. That is correct.

Q. Have you examined the books of original

(Testimony of Joseph E. Eichler.)

entry of your company for the purpose of determining the quantities of eggs, butter and cheese sold to those companies in the year 1914?

A. Yes, sir.

Q. Is that the summary that you have made in that connection? A. Yes, that is.

Q. And that is based upon your original ledger sheets of the various shipping companies?

A. That is correct.

Mr. Faulkner: I offer that in evidence, if your Honor please.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit EL in evidence.)

Mr. Faulkner: Q. Now, will you take your original record and just read from it the names of the shipping companies to whom you sold, to which that summary relates? [3988]

A. The Alaska Transportation Company, Alaska Packers Association, Alaska Steamship Company, and also included in that is the Northland Transportation Company, Alcoa Steamship Company, the American-Hawaiian Steamship Company, American Mail Line, Deconhill Steamship Company, De La Rama Steamship Company, General Petroleum Corporation, General Steamship Company, James Griffith & Sons, Hammond Shipping Company, Hillcone Steamship Company, Holland American Line, Interocean Steamship Company, Java Pacific Steamship Company, Keystone Shipping Company, or Thornley & Pitt, McCormack

(Testimony of Joseph L. Eichler.)

Steamship Company, and Moore-McCormack Steamship Company, Norton-Lilly & Company, J. L. Moore, Olympic Steamship Company, Shepard Steamship Company, Richfield Oil Company, Sudden & Christenson, Thornley & Pitt, Trans-Pacific Transportation Company, United Fruit Company, United Netherlands Navigation Company, Williams Dimond Company, American President Lines, Matson Navigation Company, Moore-McCormack Steamship Company, and Weyerhaeuser Steamship Company.

Q. Directing your attention to Defendants' Exhibit EL, what was the quantity in dozen cases of eggs, butter and cheese sold to those companies during the year 1944?

A. There were 2,007,287 dozen, or 66,910 cases of eggs; 984,991 pounds of butter, and 229,936 pounds of cheese.

Q. Now, Mr. Eichler, do you know the quantities of butter, eggs and cheese sold to those War Shipping companies for the [3989] year 1943?

A. I do not.

Q. In relation to the total volume of business do you know how it would compare with the year 1944?

A. Well, I think in 1943 the sales to the armed forces would have been a little larger than the ones mentioned for 1944. The War Shipping would have been either about the same or slightly smaller, although there were not as many individual cus-

(Testimony of Joseph L. Eichler.)

tioners in the war shipping in 1943 that there were in 1944.

Q. Have you the original ledger sheet for those companies for 1943?

A. No, we haven't the ledger sheets for those. They had all been paid up, and we had thrown—moved those records, destroyed them.

Q. In order to get those figures exact for the year 1943, it would require you to go through every handtag in your plant, is that correct?

A. That is right.

Q. But you know the proportions were a little higher for the group you referred to as the armed forces and a trifle lower with reference to the War Shipping? A. That is right.

Q. Mr. Eichler, is this a summary of the ships to whom deliveries of butter, eggs and cheese were made by Nye & Nissen between April 1st and May 15th?

A. That is a list of the deliveries that were made by the regular Nye & Nissen division. There is another list like this for the City Sales.

Q. In other words, that does not include the City Sales? A. No.

Q. Is that based upon the books of original entry showing sales [3990] during the period covered, April 1 to May 15th? A. Yes, sir.

Q. I won't ask you to read all of those items. I offer this in evidence, if the Court please.

The Court: It may be admitted and marked.

(Testimony of Joseph L. Eichler.)

(The document was marked Defendants' Exhibit EM in evidence.)

Mr. Faulkner: Q. Now, attached to the list, Mr. Eichler, you have a summary, is that correct?

A. That is correct.

Q. And you have there the three pages showing the names of the ships, is that correct?

A. Yes.

Q. And you have the dates on the left-hand side that represent the deliveries? A. Yes, sir.

Q. And in the right-hand column the name of the ship? A. That is right.

Q. You have summarized on that exhibit the number of deliveries during that period from April 1st to May 15th? A. Yes, sir.

Q. And how many deliveries were there?

A. 86.

Q. Are these deliveries made by the department that Mr. Goddard handles as shipping clerk?

A. Yes, sir. [3991]

Q. Pardon me? A. Yes, sir.

Q. What quantity in cases of eggs were involved in this shipment?

A. There were 4,131 cases of Large eggs and 1,393 cases of Medium Large eggs.

Q. How many pounds of butter?

A. 59,938 pounds.

Q. How many pounds of cheese?

A. 10,437.

Q. Have you a similar paper with reference to Nye & Nissen City Sales?

(Testimony of Joseph L. Eichler.)

A. Yes. May I go to my brief case? It is right there on the bench. I believe I have given that to you, Mr. Faulkner.

Q. What?

A. I believe I have given that to you.

Q. Did you have large sheets like this accompanying it?

A. No. I had the invoices in an envelope. That isn't there. Mr. Zirpoli has it.

Q. Did you at my request, Mr. Eichler, go through the original records, that is, the sales tags, and prepare a list of the various deliveries to various shipping companies that received butter, eggs and cheese from Nye & Nissen City Sales Division between April 1, 1944, and May 15, 1944?

A. Yes, sir.

Q. In connection with that list, Mr. Eichler, that is based upon the original handtags?

A. That is, yes.

Q. And if there are any errors or omissions it would be because the hand tags are somewhere in court? A. Yes.

Q. In other words, for every one of those you have a hand tag? [3992]

A. Well, we have some of them that the hand tags are in court that are listed on here also. We tried to get them all, yes.

Q. You tried to get them all? A. Yes.

Q. Have you made an analysis of that list for the purpose of determining or summarizing the

(Testimony of Joseph L. Eichler.)

number of deliveries made to vessels, to ships, between April 1, 1944, and May 15, 1944?

A. Yes, sir.

Q. How many deliveries were made?

A. One hundred and sixteen.

Q. What quantity of eggs were delivered?

A. 1,861 cases of Large eggs and 1,896½ cases of Medium sized eggs.

Q. And how many pounds of butter?

A. Forty-eight thousand, four hundred and forty.

Q. And how many pounds of cheese?

A. Eleven thousand, four hundred and eighty.

Q. That summary is attached to the list of various vessels, is that correct?

A. That is correct.

Mr. Faulkner: Now I offer that in evidence, if the Court please.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit EX.)

Mr. Faulkner: Q. Now, Mr. Eichler, in the regular course of business of your firm did you handle in the accounting [3993] department on occasions when the situation arose the matter of adjusting with the purchasing department of the United States Army adjustments relating to weights of butter? A. Yes, sir.

Q. Now, then, have you brought into court some of the credit items and records on that subject?

A. I did.

(Testimony of Joseph L. Eichler.)

Q. I show you a paper here and ask you if that is part of the regular records of the firm of Nye & Nissen? A. It is.

Q. And what is that document?

A. This is a credit memorandum.

Q. To whom is it issued?

A. Issued to the Quartermaster Market Center.

Mr. Faulkner: I will show it to Mr. Pratt. I offer this in evidence, if the Court please.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit EO.)

Mr. Faulkner: Q. Directing your attention to Defendants' Exhibit EO, what does that credit memorandum indicate in respect to any credit given to the Army?

A. There was a delivery of 30,000 pounds of butter made to the Quartermaster Market Center under Purchase Order No. SF-29517. When this butter was received by them and they weighed it up they found there was only 29,990 pounds in the delivery, so there was a shortage of 10 pounds, for which we [3994] had to give them credit. Actually the way we handled the billing to them was, they would call us up about this and we would have to issue a new invoice to them for the correct amount. Having already put the original invoice through our records, we had to issue this credit memorandum to get the records straight.

Q. So that in this instance the weighing indicated a ten pound shortage, is that right?

(Testimony of Joseph L. Eichler.)

A. Yes, sir.

Q. In the interest of time I will treat these as a series. Are these credit memorandums that you issued where adjustments were made in the regular course of business relating to weights?

A. Yes, sir.

Q. Do they all relate to butter?

A. I believe you have those in your hand. These are the invoices I have here. Oh, yes, they are all here, I guess. Yes, they are all here.

Q. These all relate to credits?

A. These are all credits.

Mr. Faulkner: I offer the group in evidence, if the Court please. Do you want to see these? They are merely typical of the method by which weights were handled, Mr. Pratt.

I offer in evidence as Exhibit EP credit memorandum relating to a transaction of July 17, 1943, with a credit memorandum and the hand tag; as EP-1, credit memorandum and hand tag dated August 10, 1943; as EP-2, credit memorandum and hand tag dated July 21; as EP-3 and 4, hand tags relating to transactions, the first on July 15, 1943, and the second [3995] on July 17, 1943.

(The documents were thereupon received in evidence and were marked respectively Defendants Exhibits EP, EP-1, EP-2, EP-3 and EP-4.)

Mr. Faulkner: Q. Now, Mr. Eichler, referring to the exhibits EO and EP, were you able to find in

(Testimony of Joseph L. Eichler.)

your records in 1943 and 1944 any additional credit memorandums? A. No.

Q. In respect to EP, what was the credit involved in that transaction?

A. There was a credit issued to the Navy Market Office on July 17, 1943, for 34½ pounds of butter.

Q. And what was the quantity that was involved in the order?

A. The order was under Purchase Order No. SF-1423? the quantity involved was 4,692 pounds.

Q. What was the credit involved in EP-1?

A. 56½ pounds.

Q. What was the amount of butter involved?

A. 7,458 pounds.

Q. What was the credit involved in EP-2?

A. 117 pounds.

Q. And what was the quantity involved in the order?

A. There are three deliveries on this. You have only put one on this. This is one credit memorandum covering three deliveries. [3996]

Q. Have those any relation to EP-3 and 4?

A. Yes, and these all fit together.

Q. So they are all together. What was the credit involved and what was the amount of butter involved?

A. Total amount of credit was 167 pounds and there were 22,712 pounds.

Q. In respect to the delivery of cheese, do you

(Testimony of Joseph L. Eichler.)

know whether they were handled in the same way, by credit memoranda? A. They were, yes.

Q. Who is D.P.M.A.?

A. D.P.M.A. is Dairy Products Marketing Association. I believe it is a governmental agency, a semi-governmental agency.

Q. You are not sure?

A. I am not sure of its exact construction.

Q. A request was made, Mr. Eichler—what is the exhibit, Mr. Pratt, relating to that credit to American President Lines?

Mr. Pratt: The credit of 26 cases of eggs in connection with the steamship William Clark.

Mr. Faulkner: That's right.

Mr. Pratt: It is in evidence and my request was to produce any other credit memorandum relating to that ship.

Mr. Faulkner: That's right.

Mr. Pratt: For that voyage.

Mr. Faulkner: I just want to know that number and I can [3997] comply with your request.

Mr. Houck: 117.

Mr. Faulkner: I show you, Mr. Eichler, U. S. Exhibit 117, and ask you if that is a credit memorandum of American President Lines, I mean issued to American President Lines relating to the steamship Clark? A. Yes, it is.

Q. What is the date of it?

A. The date is November 11, 1943.

Q. How many cases of eggs are they given credit for? A. Thirty-six.

(Testimony of Joseph L. Eichler.)

Q. How many boxes of butter?

A. Eighteen.

Q. What is the total amount?

A. $1,105.04.

Q. You examined your records to determine whether there was any other credit memorandum issued to that company in relation to that transaction, have you? A. I did.

Q. Is that the only one?

A. That is the only one.

Q. In other words, the one already in evidence is an identical exhibit in its form to the one that you brought in here? A. That's right.

Mr. Pratt: I should like to correct the statemen I made. I said the credit memorandum was for 26 cases.

Mr. Faulkner: You mean it is 36.

Mr. Pratt: I made a mistake. It is 36.

Mr. Faulkner: Q. Mr. Eichler, in the year 1944 did you become acquainted with Mr. Johnson and Mr. Magee? [3998] A. I did, yes.

Q. Where?

A. At the office of Nye & Nissen.

Q. Were they out there for any length of time?

A. I believe they were out there for several weeks.

Q. Did you have contacts with them from time to time?

A. I did continually while they were there.

Q. Did you have any occasion to have requests made to you to produce records?

(Testimony of Joseph L. Eichler.)

A. I did, yes.

Q. Did you at any time decline to produce any records requested by either Mr. Johnson or Mr. Magee? A. I did not.

Q. Did you have any discussion with them about the absence of records? A. I did, yes.

Q. What was that record?

A. That was the storage record.

Q. What request was made on you by Mr. Johnson or Mr. Magee?

A. They asked me for certain storage records for a previous—it was previous to the one that they were working on and we did not have that. It was not our practice to keep those storage records. The reason why we did not keep them was that we kept a separate sheet for each lot of eggs that went into a storage warehouse; one side of the sheet showed the amount of merchandise that went into the storage, it showed the date and the number of cases, the number of packages, and the cost price, and we would arbitrarily set it up, that amount of money, and on the other side it would merely show [3999] the date of withdrawal and the number of cases withdrawn. It wouldn't have any money on it because the only purpose that we used those sheets for was to keep account of what we had in storage and also to take our inventory at the end of each month.

Q. Now, Mr. Eichler, the time of this visit was in 1944? A. Correct.

(Testimony of Joseph L. Eichler.)

Q. Now, at any time did you ever keep beyond the current season the cold storage plant records?

A. We never kept them, no.

Q. Were those records available from other sources other than yourself? A. They were.

Q. Did you have any conversation with Mr. Johnson and Mr. Magee as to where they could get those records if they were interested in them?

A. I really don't remember that. Anybody that has any experience knows that you can go into a cold storage warehouse and get the same information that I used to keep on my sheets with the exception of the money amounts.

Q. In connection with the hand tags, we have called them hand tags in this trial, they represented the delivery of merchandise to various customers of Nye & Nissen, were those turned over to Mr. Magee and Mr. Johnson for inspection?

A. They were.

Q. Were your books of account there for inspection? [4000] A. They were.

Q. Did they make a request of you for the income tax returns of the firm of Nye & Nissen?

A. They did.

Q. Were they turned over to them for inspection? A. They were.

Q. Do you know of any request other than for the record which you did not have they made on you to give them records for inspection that was refused?

A. I don't know of anything.

(Testimony of Joseph L. Eichler.)

Q. Now, as a matter of fact, Mr. Eichler, during the entire progress of this trial since the 15th of January, members of the United States Government have been in your office going over your records every day, isn't that correct?

A. That is correct. There is a man there right now.

Q. Every record that you have relating to the basis of any transaction with a customer, the real basis of the transaction, the original records are out there for many, many years back, isn't that correct; by that, I mean the account books showing sales?

A. Yes.

Q. And deliveries of merchandise?

A. They are.

Q. Ledger sheets for the year 1944 were all available there?

A. That is the customers' ledger sheets. Our other ledger sheets are available back further than that.

Q. Did you have available the purchase orders from the U. S. Army, were they ever requested by Mr. Magee or Mr. Johnson? [4001]

A. I don't recall that.

Q. Whether they were or not they were there available to them? A. They were.

Q. Do you recall, Mr. Eichler, whether or not at any time you ever told either Mr. Magee or Mr. Johnson that they could not come back into the place again?

A. I never said any such thing.

(Testimony of Joseph L. Eichler.)

Q. Do you recall the circumstances surrounding their ceasing to come out to your plant?

A. They came to me one day and asked me if it would be all right if they—they were working on some invoices, and they asked me if it would be all right if they would take the invoices out of there to the office and work on them in their own office. I told them I would consult with other people and let them know. We had a consultation about it and we decided to ask our attorney and our attorney took the matter up from that point on, and our attorney at that time was Mr. Freed.

Q. Is that the only request that they had any discussion about, where a request was made that was not immediately fulfilled by you, when they requested to remove your records from your firm and take them down to the Department of Justice office? A. That's right.

Q. And that was not refused. The request they made, it was neither accepted nor refused?

A. That is correct.

Mr. Faulkner: That is all, Mr. Eichler. May I have [4002] those exhibits, please?

The Clerk: Mr. Hippeli has them.

The Court: Is that all from this witness?

Mr. Faulkner: Yes. I would like to show that the exhibit to the Jury. Have you any cross-examination, Mr. Pratt?

Mr. Pratt: I have just a question.

Mr. Faulkner: Do you want to cross-examine and then show the exhibits to the Jury?

(Testimony of Joseph L. Eichler.)

The Court: While the Jury is resting we will take a recess.

(Recess.)

Cross-Examination

Mr. Pratt: Q. Mr. Eichler, I just want to ask you a question or two about the occasion when the FBI accountants, Mr. Johnson and Mr. Magee, were working there at your office. Don't you recall that during the latter part of the time they were there Mr. Johnson was there alone, do you remember that?

A. I think there were times when he was, yes.

Q. Don't you recall that along the latter part of November you advised Mr. Johnson that they could not have the space after the first of December because the room was to be used as a conference room and wouldn't be available to them any more?

A. I don't recall that. There were times when during the long stay that these gentlemen made at our office that I requested, I asked them to let us have the room, or I [4003] would tell them a day before that we would need the room the next day and I would appreciate it if they wouldn't come down that day.

Q. Let me see if I can refresh your recollection a little further about this. Don't you recall that you told Mr. Johnson that the room would not be available to the Government after the first of December and didn't he then request that he be permitted either to have some space some place or else

(Testimony of Joseph L. Eichler.)

be permitted to take the books to the FBI office and examine them there?

A. No, I don't recall that at all.

Q. You don't recall that? A. No.

Q. Don't you recall that after that the matter was then referred to the attorney and that he was then excluded, he and his associate, Mr. Magee, were excluded from any further examination of the books on the ground that what they were doing was not making an audit but that they were looking for evidence in a criminal case. Don't you recall that? A. No, I don't recall that.

Mr. Pratt: That is all.

Mr. Faulkner: I would like to exhibit to the Jury, your Honor, the exhibits that have not been exhibited and the first group represents purchase orders relating to eggs involved in the transaction that Mr. Smith testified about at the ice house, Exhibit EH, and the Van Wagenen chart of breaking out eggs, and in this group, your Honor, are the credit [4004] memoranda relating to the method of handling credits. That is for butter and that is the first group of exhibits handed to the juror in the seventh seat in the first row, and handing to the juror in the back row, the first seat in the back row, I am handing Defendants' Exhibits EJ, EK, EL, EM, and EN, which are the summaries of quantities that have been testified to by Mr. Eichler.

The Court: You may step down.

Mr. Faulkner: May Mr. Eichler remain in the

courtroom until the next witness is called, your Honor?

Mr. Pratt: No objection at all.

The Court: Call your next witness.

Mr. Faulkner: We want to introduce some of these exhibits, your Honor. If the Court please, at this time we offer in evidence a Food Control Regulation No. 14, directed to all agents and general agents, United States Shipping Representatives.

The Court: Raise your voice.

Mr. Faulkner: Directed to all Agents and General Agents, United Nations Shipping Representatives and Licensed Suppliers, Defendants' Exhibit D, which is a War Food Administration memorandum directed to suppliers; Defendants' D, which is a War Food Administration memorandum directed to Egg Graders, and I won't bother to read these into the record, I showed [4005] them to the Jury. They came to the attention of the Court and Jury in the early stages of the trial. Defendants' Exhibit C, a War Food Administration bulletin, a memorandum to egg graders dated February 8, 1944.

I will withdraw the offer, your Honor, of the one dated January 1, 1945, because nothing arises in this case subsequent to that date. That may remain as Defendants' Exhibit D for Identification, and we merely offer Defendants' Exhibit C dated February 8, 1944.

(Defendants' Exhibit C for Identification was thereupon received in evidence.)

Mr. Faulkner: We offer in evidence an exhibit

which was merely identified by the Government, U.S. Exhibit 30 for Identification, which is a purchase order from the Moore-McCormack Steamship Line. Have you any objection?

Mr. Pratt: None.

The Court: Admitted and marked.

Mr. Faulkner: In other words, it will receive a Defendants' mark instead of for the Government.

(The document, previously marked U.S. Exhibit 30 for Identification, was received in evidence and marked Defendants' Exhibit EQ.)

Mr. Faulkner: I won't read all of it or take the time to pass it to the Jury, but this is a purchase order dated May 9, 1944, directed to Nye & Nissen, relating to the [4006] steamship called the Cape Cumberland. It calls for 700 pounds of butter, U.S. Grade A or 92 score, one-pound prints, 460 dozen eggs, U.S. Procurement, shell treated, Grade I Large, Minimum net weight per 30 dozen, 45 pounds, 15 cases. 100 pounds Cheese, American Whole Milk Daisy, 92 Score, 20-22 pounds.

I offer in evidence U. S. Exhibit 63 for Identification, a purchase order from the General Steamship Company relating to the Josiah Royce.

Mr. Pratt: No objection.

The Court: Admitted and marked.

(The document, previously marked U.S. Exhibit 63 for Identification, was thereupon received in evidence and marked Defendants' Exhibit ER.)

Mr. Pratt: Isn't that a copy of a document that is already in, Mr. Faulkner?

Mr. Faulkner: I couldn't find the one that is in. If it is in we will withdraw the offer.

Mr. Pratt: 157.

Mr. Faulkner: 157? That will be the next—there is no use putting that in evidence then. There is a counterpart, so we will withdraw that offer. I believe there is no material difference there, Mr. Pratt.

Mr. Pratt: No. This is—this one which is 63 for Identification is simply a certified copy certified by someone [4007] at the office of the General Steamship Company.

Mr. Faulkner: I see. Mr. Clark, I am sure this is in evidence, but I want to check with the Clerk, your Honor.

The Clerk: Y-1 is in evidence.

Mr. Faulkner: May I see the WSA, War Shipping book? There are certain pages in evidence?

The Clerk: CX-1 are in evidence.

Mr. Faulkner: Will your Honor indulge us a moment? The defendants rest, your Honor.

(Defendants rest.) [4007-a]

MARIE VALDEZ,

called as a witness for the Government in rebuttal, having been previously sworn, testified as follows:

The Clerk: This witness was sworn but did not testify.

Mr. Pratt: She was sworn before.

The Clerk: Take the stand. You have already been sworn, have you?

The Witness: Yes.

The Clerk: Will you be seated? Will you state your name? A. Marie Valdez.

Mr. Faulkner: Mr. Eichler may be excused, your Honor.

The Court: Very well.

Direct Examination

Mr. Houck: Q. Mrs. Valdez, you were employed by Nye & Nissen as an egg candler, were you not? A. That's right.

Q. During what period was that?

A. 1941 to 1943.

Q. During that period from whom did you receive your instructions? A. Mr. Menges.

Q. Mr. Ed Menges? A. Mr. Ed Menges.

Q. Do you recall that you moved from the old plant on Townsend Street to the new plant on Missouri Street about September or October of 1942?

A. Yes.

Q. During the few months previous to moving from the old plant did you receive instructions from Edward Menges to transfer eggs out of Gov-

(Testimony of Marie Valdez.)

ernment stamped cases, and to put in their [4008] place eggs that had not been inspected, eggs of a different quality without removing the Government stamp from the case? A. Yes.

Mr. Houck: That is all.

Mr. Faulkner: That was pretty fast for me.

Mr. Houck: I have no other questions.

Mr. Faulkner: If the Court please, I ask that answer go out, your Honor, so that I can object.

The Court: Read the question.

(Question read.)

Mr. Faulkner: May I have that again? I mean our record, your Honor, not this question asked by Mr. Houck.

The Court: There was an objection made. I asked the reporter to read the question.

Mr. Faulkner: Oh, excuse me, your Honor.

The Court: Read the question, Mr. Reporter, and raise your voice.

(The question was read by the reporter.)

Mr. Faulkner: Will your Honor permit me to find the reference in the record?

The Court: Very well.

Mr. Houck: I have one more question.

Q. Mrs. Valdez, during the period of time immediately following moving to the new plant on Missouri Street, did you receive instructions from Edward Menges to transfer eggs from Government [4009] stamped cases, from Government

(Testimony of Marie Valdez.)

stamped cases in the same manner as in the last question?

Mr. Faulkner: In relation to the question, I object to it and move to strike the other answer out upon the ground that this entire field was part of the Government's case in chief. This young lady, the present witness, she was called in here as a witness and got as far as the court reporter to testify in this case. When they asked Mr. Menges the question that is unrelated to a transaction involved, that is a collateral matter and they are bound by the answer, and to start retrying their case on some transaction in 1942 unidentified with the fulfillment of an order, unidentified with a transaction in the indictment, it is merely an effort on the part of the Government to have the last word on the subject. I understand the uniform rule is, and I accepted being bound by it, the court observed in my presentation of our defense if I asked a witness a question that related to the substance of this case and an answer was given that was given that was not in accord with facts—when I asked my questions whether a witness had a conversation and I get an answer, I am bound by it, and I understand that that is the rule of law and I object to this as not proper rebuttal, and——

Mr. Pratt: This is a matter of specific impeachment. Menges was asked on cross-examination if he did not give such instructions, and he said he did not. It is relevant to the [4910] issues in this

(Testimony of Marie Valdez.)

case. It is not collateral. It is highly relevant, and it is a direct example of specific impeachment.

Mr. Faulkner: The Supreme Court of this State has held, and the Federal courts have followed it, that where on cross-examination of a witness you go off on these collateral and side issues, when you ask these questions you are bound by the answers. You cannot impeach a man on a collateral matter.

The Court: Read the question.

(Question read.)

The Court: Objection overruled.

Mr. Faulkner: Exception.

The Witness: A. Well, I can't be sure of any special time but I know we did it many times.

Mr. Houck: Q. Is that during, or is it true in the period after you moved into the new plant?

A. I believe so.

Mr. Houck: That is all.

Mr. Faulkner: May we ask that go out? That is not impeachment.

The Court: What she believes may go out.

Mr. Houck: That is all on direct.

Cross-Examination

Mr. Faulkner: Q. Is your name Miss or Mrs. Valdez? A. Mrs.

Q. When were you employed at the firm of Nye & Nissen?

A. In 1913 the later part. [1011]

Q. The latter part? A. About October.

Q. Before coming into this court, and within

(Testimony of Marie Valdez.)

the last two or three weeks, you have discussed your testimony with a man named Pineda, haven't you?

A. Well, I have spoken to him.

Q. On the subject matter of this case, haven't you? Haven't you?

A. Well, just as a friendly call.

Q. And he discussed with you this matter of being here right now, didn't he?

A. Well, he didn't—well, all he did was talk about friendly things, and he said he had been here, and I said that I was expecting to be called.

Q. He asked you to get a bunch of the girls and come in here, too, did he not?

A. No, he didn't.

Q. Didn't he discuss that with you?

A. No.

Q. As I understand it, you got a direction at some time in the old plant, you mean 324 Townsend Street, is that right? A. Yes.

Q. You got a direction from Mr. Menges, is that correct? A. That's right.

Q. What did he say to you? What were the words he used on the instance that you just referred to on your direct examination; what did Mr. Menges say?

A. Well, he said to transfer the eggs out of stamped cases and set the cases aside to put other eggs in and we would put them back into stamped cases.

Q. Isn't it a fact, Mrs. Valdez, that in connection with the transferring of eggs out of a stamped

(Testimony of Mario Valdez.)

case into another case [1012], that was a single transaction that you took the eggs out of a stamped case and you put them into another empty case?

A. That's right.

Q. And that is all you did at that time?

A. No. Then we filled the other case with eggs.

Q. You did that later, did you not?

A. Well, in all the same day.

Q. The same day. But Mr. Menges was talking about a transaction where you did not fill both cases at one and the same time as the same transaction, and you did not, did you?

A. Well, you have to take the eggs out before you can put the other ones in.

Q. Yes. When you took those stamped cases of eggs and took the eggs out of that case and put them in another case, that was an operation that you performed on many occasions, isn't that correct? A. That's right.

Q. All right. And when you finished that stamped case you then got another stamped case and emptied that, didn't you? A. Yes.

Q. Then at some other time, maybe the same day or the following day you would fill that stamped case, isn't that correct? A. That's right.

Q. Or some other girl would fill it.

Mr. Faulkner: I submit there is no impeachment involved there.

The Court: The matter is entirely for the jury to determine. [1013]

(Testimony of Marie Valdez.)

Mr. Faulkner: Well, I move to strike it out again in the light of cross-examination.

The Court: The motion will be denied.

Mr. Faulkner: Exception.

Q. Now Mrs. Valdez, upon occasions when you would be taking eggs out of a stamped case and putting them in another case, those cases would go out on the floor and maybe some other girl or some other girls might at a later time use those cases that had been stamped, isn't that right?

A. Well, that is where they were set aside, and then we were given other eggs to put in them.

Q. Yes. That would be after you had finished the transferring of the eggs?

A. That's right.

Q. You would have a very simple operation of taking eggs out of a stamped case, putting them into an unstamped case, and when you were through that operation you would have a lot of cases?

A. We would have a stamped case.

Q. Yes, and you would have to then put eggs in those cases? A. That's right.

Q. Isn't that right? You did it many times?

A. Yes.

Mr. Faulkner: That is all. I renew the motion, your Honor.

Q. You referred to a second occasion. When was that?

A. Well, it was on many occasions. I don't remember any special date, but I know it was done quite often. [1011]

(Testimony of Marie Valdez.)

Q. You recollect a particular question was asked you by Mr. Houck whether at a particular time and in a particular place——

Mr. Houck: Oh, no, no, no. I said the period of several months before they moved from the old plant.

Mr. Faulkner: I thought that was one at the old plant and one at the new.

Mr. Houck: You moved the other be stricken out?

Mr. Faulkner: What?

Mr. Houck: I say you moved the other be stricken out. Go ahead.

Mr. Faulkner: I thought your Honor merely struck out the expression "I believe." If the record on that entire transaction is out——

The Court: You are correct. The court indicated to the jury what she believed may go out, limiting it to that language.

Mr. Faulkner: But Mr. Houck has assumed and Mr. Sullivan that your Honor struck out the incident.

The Court: I cannot imagine what they assume nor have I any concern with it.

Mr. Faulkner: If it is out I don't want to cross-examine on it; if it is in I do.

The Court: I indicated to the jury that the language "I believe" was stricken. If I am in error about it I will stand corrected upon having the reporter read the record. [1015]

Mr. Faulkner: I will proceed, your Honor.

(Testimony of Marie Valdez.)

Q. There was some other instance described to you by counsel for the Government. That second instance, when did it occur?

A. I don't remember any date or any specific time. We did it many times a day for years, like another day's work.

Q. You are not then testifying that a particular time and at a particular place Mr. Menges used certain words to you, are you?

A. Well, when he gave orders we could all hear the orders.

Q. What was the order that he gave, the words that he used on the second occasion?

A. Well, I can't remember the exact words he used.

Q. Was there any difference at all between the words he used on the first occasion that I just asked you about?

A. Well, I understood what he meant, though. We all did, but I don't know what his exact words were now.

Q. In other words, you interpreted some words that came from his lips, is that right?

A. Well, we know. I mean I understand his words but I cannot explain the exact words he used.

Q. You were transferring eggs from a stamped case into another case? A. That's right.

Q. Is that right? Now, in connection with that operation, whether it was on the first occasion

(Testimony of Marie Valdez.)

or the second occasion, what did Mr. Menges say to you, what were the words he used?

A. He gave orders to the girls. [1016]

Q. What did he say, what was the instruction to you that you heard him give?

A. To take the eggs out of the stamped case and then they would give us eggs later on to put in that case.

Q. Those were his instructions?

A. That's right, that is what he meant.

Q. I mean, is that what he said?

A. Well, as far as I remember that is what he said.

Q. Then your best recollection of what Mr. Menges said in your presence was, "Take out eggs out of that stamped case," and later he would give you eggs to put in their place?

A. That's right.

Q. Is that right? A. Yes.

Q. In fulfillment of that direction, whatever it was, you did take eggs out of a stamped case and later when the cases were all empty and other eggs were given to you to put in there?

A. That's right.

Q. Is that it? A. Yes.

Mr. Faulk[illegible] That is all.

Redirect Examination

Mr. Houck: Q. Mrs. Valdez, on these occasions you told us about, how long was it after you finished transferring the eggs out of inspected cases that you began refilling those cases?

(Testimony of Marie Valdez.)

Mr. Faulkner: We object to that as not proper redirect examination. [1017]

The Court: Overruled.

Mr. Faulkner: Exception.

The Court: Read the question.

(Question read by the reporter.)

Mr. Faulkner: I object to it further because the witness has not told us about any occasion, she is not fixing a time or a place.

The Court: Overruled.

Mr. Faulkner: Exception.

The Court: Read the question again.

(Record read.)

The Witness: A. Right away.

Mr. Houck: That is all.

Recross Examination

Mr. Faulkner: Q. What do you mean, "right away"?

A. As soon as we had them empty they would send in more eggs and we would start filling those stamped cases again.

Q. Tell me an instance, give me an instance when you commenced right away; tell me the date, the time.

A. Well, I am sorry, but I don't remember any date.

Q. What stamp was on the case?

A. A Government stamp.

Q. What Government?

(Testimony of Marie Valdez.)

A. Well, it was a horseshoe type.

Q. A horseshoe type. You have seen thousands of cases in the plant of Nye & Nissen with a horseshoe type inspection stamp on, haven't you?

A. Yes.

Q. You have seen thousands of cases come into that plant [4018] with a horseshoe mark, haven't you? A. Yes.

Q. On the occasion that you transferred eggs out of a number of cases that had a horseshoe on, do you know anything about where those eggs came from, yourself? A. No, I don't.

Q. Do you know where the eggs that you took out of there went yourself? A. No.

Mr. Faulkner: That is all.

Mr. Houck: That is all.

MRS. ELEANOR McKENNA,

called by the Government in rebuttal; sworn.

The Clerk: Q. Will you state your name, please?

A. Eleanor McKenna.

Direct Examination

Mr. Houck: Q. Mrs. McKenna, you have been employed by Nye & Nissen as an egg candler, have you not? A. Yes, I have.

Q. During what period was that?

A. From 1932 to January, 1945.

(Testimony of Mrs. Eleanor McKenna.)

Q. During that entire period? A. Yes.

Q. You recall that you moved from the Townsend Street plant to the Missouri Street plant in September or October of 1942?

A. October, 1942.

Q. October, 1942? A. Yes.

Q. During the several months prior to moving from the old plant to the new plant, did Edward Menges instruct you to remove eggs from Government stamped cases and put in their place inferior eggs or other eggs without removing the stamp?

A. We did.

Mr. Houck: That is all.

Mr. Faulkner: I move that go out on the same grounds urged in connection with Mrs. Valdez's testimony, and upon the additional ground this lady has already testified on this subject as part of the case in chief.

The Court: Overruled.

Mr. Faulkner: Exception.

Cross Examination

Mr. Faulkner: Q. You are the lady whose husband was a soldier and who was in the Veterinary Corps, are you not?

A. My husband is in the Navy.

Q. You were an egg candler, weren't you?

A. I was.

Q. You have been brought into court to testify on this subject. Have you talked to Mr. Pineda about this matter? A. No, I have not.

(Testimony of Mrs. Eleanor McKenna.)

Q. Do you know him?

A. Yes, I know him.

Q. Have you talked to him in the last few months? A. No, I have not.

Q. You recall that you were a candler out in the plant of Nye & Nissen on Missouri Street?

A. That is correct.

Q. While you were out there, Miss—or is it Mrs.? A. Mrs. McKenna.

Q. While you were there, Mrs. McKenna, you and other girls candled eggs, is that correct?

A. That is correct. [4020]

Q. In the course of that work on some occasions you received some instructions from Mr. Menges, is that correct? A. Yes, that is true.

Q. What were the words that he used, do you remember them?

A. Well, it is hard to recall right now exactly just what words he might use. He always gave the girls in the egg room the orders and we carried them out.

Q. I know, but he gave you orders that related to your work; in other words, the work that you were carrying on in that candling room your instructions would come from time to time from Mr. Menges? A. That's right.

Q. In that period of time on occasion you transferred eggs out of cases that had Government stamps on them, didn't you? A. Yes, we did.

Q. You would put them in fiber cases, or wooden

(Testimony of Mrs. Eleanor McKenna.)

cases, or on these occasions, am I correct in that——

A. What was that?

Q. I am asking you, on occasions, right after you moved out there in October, 1942, just what Mr. Menges said to you in respect to that particular operation?

A. Well, Mr. Menges wanted us to transfer eggs. He would tell us to transfer the eggs.

Q. I will ask this question, Mrs. McKenna: When Mr. Menges asked you to transfer a case of eggs from a fiber case to a wooden case or from a wooden case to a fiber case, when [4021] you got that direction you complied with it?

A. Well, exactly what do you mean by a fiber case?

Q. Well, they were here. Let me look. How long were you there?

A. I was employed there from 1930 to 1945.

Q. I will show you what I mean by a fiber case, a cardboard case (indicating). There is that type of case; those two top cases I refer to as fiber cases. You have seen those in the plant, have you not?

A. Yes.

Q. Cases of that type? A. Yes.

Mr. Faulkner: I offer this in evidence, your Honor.

(The photograph was marked Defendants' Exhibit ES in evidence.)

Mr. Faulkner: Q. Mrs. McKenna, on the occasion you were told by Mr. Menges to transfer eggs

(Testimony of Mrs. Eleanor McKenna.)

from wooden cases into fiber cases were you not, on occasions? A. Yes, we were.

Q. And you were told to transfer eggs from fiber cases to wooden cases? A. Yes.

Q. And you were told to transfer eggs out of cases that had Government marks on them, is that correct? A. That's right.

Q. In that period of time you have seen, filled and emptied literally thousands of cases with Government marks on, haven't you?

A. I wouldn't say how many.

Q. Pardon me?

A. I would not say how many.

Q. Well, you have seen a great many, is that correct? A. I have seen a good many of them.

Q. Those cases were used for eggs that would be transferred [4022] from one case to another, is that right? A. That's right.

Q. Now, in that operation it is true, is it not, Mrs. McKenna, that the method of it was that a quantity of eggs came into the candling room, you would take the eggs out of one case and put them into an empty case, and then those cases would be set aside and you would continue the operation of transferring for a period of time, isn't that correct? A. Yes.

Q. Then later, maybe the same day, maybe the next day, the cases that you had emptied on that occasion would be again used for other eggs, am I correct in that? A. Yes.

Q. That operation, as far as your directions

(Testimony of Mrs. Eleanor McKenna.)

were concerned, was merely a simple direction from Mr. Menges to you to transfer eggs out of one case into another; isn't that correct?

A. Well, that was the operation of transferring eggs.

Q. Pardon?

A. That was the operation of transferring the eggs.

Q. Yes. In other words, he would tell you to transfer the eggs from one lot of eggs in one box into another bunch of empty boxes, isn't that right?

A. I don't know exactly what you mean.

Q. You don't understand the question. Mrs. McKenna, this operation of transferring eggs in so far as Mr. Menges' direction was concerned, was a direction to the girls in the candling room to take eggs out of a certain box, whether wood or fiber?

A. Yes.

Q. And transfer the eggs in that box, from that box into another box? A. That's right.

Q. That would be his entire direction, isn't that correct? A. Or also vice versa.

Q. By "vice versa," what do you mean by that?

A. Well, one case was a stamped case.

Q. What?

A. One particular case was a stamped case. We would take the eggs out of that case and we would set them in the other, and we would proceed to fill the other case.

Q. You would do that later when you had finished your job of transferring? A. Yes.